

In re ) Fair Hearing No. 15,323  
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Appeal of )

The petitioner appeals a decision of the Department of Social Welfare finding that he is no longer eligible for the Vermont Health Access Program (VHAP) due to excess income.

1. The petitioner is a forty-nine-year-old single man who earns most of his living through self-employment as an upholsterer and who is also employed part-time as a maintenance man at a health club.

2. On December 2, 1997, the petitioner was subjected to a six-month review for eligibility for health insurance under the VHAP program. He produced evidence at that time from his 1996 tax forms that he had net annual profits of \$13,173.77 from his upholstery business. He also produced wage stubs showing that he had averaged \$99 per week in gross wages during the month of November 1997, from his maintenance job.

3. The Department divided his annual self-employment earnings by twelve to obtain a monthly figure of \$1097.82 and multiplied his weekly wages by 4.3 weeks to obtain a monthly wage figure of \$425.70. From the total of those two, a \$90 standard employment expense was deducted for a countable total of \$1433.52 per month in income. That figure was compared to the protected income level for one of

\$987 per month in the VHAP program which placed the petitioner over income by \$446.52.

4. The petitioner was notified on December 16, 1997, that his VHAP would close effective December 31, 1997, because his income exceeded Department standards for his household.

5. The petitioner does not dispute the figures used by the Department but says he may quit the maintenance job soon as he feels the conditions are unsafe. He is currently living in a motel for which he pays \$500 per month because the apartment building in which he lived was sold recently.

He has \$2,000 in the bank which is his only hedge against injury. Most of his income goes for his expenses, including car insurance he needs to remain employed. He has a hernia and needs an operation so the insurance is important to him right now. He feels the income standards are too low in the VHAP program and need to be raised a little.

ORDER

The decision of the Department is affirmed.

REASONS

Under the VHAP program eligibility rules, earned income is countable and includes wages and profit from self-employment. W.A.M. 4001.81(c). That countable income is subject to a "standard employment expense deduction" of \$90.

W.A.M. 4001.81(e).<sup>1</sup> The result, the countable income, is

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<sup>1</sup> There is also a deduction for dependent care expenses

compared with 125% of the federal poverty line (FPL) and, if it is found to be over that maximum, the applicant cannot be eligible. W.A.M. 4001.84.

Although the Department represented at hearing that the 125% of poverty line figure was currently being used (which is about \$822 per month), the figure with which the petitioner's income was actually compared according to the budget sheet which accompanied the decision was, \$987, or 150% of the federal poverty guideline. See P-2420(B)(3A). That is an even higher figure than that listed in the regulation and the petitioner's income still exceeded that more generous test. It must be concluded that whichever test should have been used, the petitioner's countable income was correctly calculated and was in excess of both. If the petitioner's income has gone down due to his leaving the maintenance job or his new income tax return reveals he actually made less money in 1997, he should reapply at once to have his eligibility redetermined.

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at W.A.M. 4001.81(f) but the petitioner does not appear to be eligible for that deduction.